

DE 03-030

CONNECTICUT VALLEY ELECTRIC COMPANY
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

Application for Approval of Settlements and Related Transactions
Related to the Implementation of Restructuring in the Area
Served by Connecticut Valley Electric Company, Inc.

Prehearing Conference Order

O R D E R N O. 24,144

March 18, 2003

APPEARANCES: Robert A. Bersak, Esq. for Public Service Company of New Hampshire; Kenneth C. Picton, Esq. and Rath, Young and Pignatelli, P.A. by M. Curtis Whittaker, Esq. for Connecticut Valley Electric Company and Central Vermont Public Service Corp.; James K. Brown, Esq. and Senior Assistant Attorney General Wynn A. Arnold for the Governor's Office of Energy and Community Services; McLane, Graf, Raulerson, & Middleton, P.A. by Sarah B. Knowlton, Esq. for the City of Claremont; Devine, Millimet & Branch, P.A. by Mark W. Dean, Esq. for the New Hampshire Electric Cooperative, Inc.; Alan M. Linder, Esq. for New Hampshire Legal Assistance; McCauley & Plitch, LLC by Lawrence W. Plitch Esq. and Bossie, Kelly, Hodes, Buckley & Wilson, P.A. by Jay L. Hodes, Esq. for Wheelabrator Claremont, Inc.; Bianco Professional Association by Jeffrey A. Meyers, Esq. for the Sullivan County Regional Refuse Disposal District and the Southern Windsor/Windham Counties Solid Waste Management District jointly d/b/a New Hampshire-Vermont Solid Waste Project; Katie Lajoie, John Tuthill and William Gallagher for Working on Waste; Consumer Advocate Michael W. Holmes on behalf of residential ratepayers; and General Counsel Gary M. Epler for the Staff of the New Hampshire Public Utilities Commission.

I. BACKGROUND AND PROCEDURAL HISTORY

This proceeding involves the proposed acquisition by Public Service Company of New Hampshire (PSNH) of the utility franchise and assets of Connecticut Valley Electric Company (CVEC) on terms that would resolve issues related to CVEC's

stranded costs and the opening of CVEC's service territory to retail competition for electrical energy supply pursuant to the Electric Industry Restructuring Act, RSA 374-F. CVEC, which serves approximately 10,000 customers in Claremont and other communities along the Connecticut River, is New Hampshire's smallest electric utility and the only one that has not at least begun the process of RSA 374-F restructuring.¹

At issue are three separate agreements submitted on January 31, 2003 for the Commission's approval by signatories to those agreements: PSNH, CVEC, CVEC's parent company Central Vermont Public Service Corporation (CVPS), the Governor's Office of Energy and Community Services (ECS), the Office of Consumer Advocate (OCA), the City of Claremont and New Hampshire Legal Assistance (NHCLA) (collectively, the "Applicants").²

¹ CVEC and other utilities sought injunctive relief against the Commission to prevent restructuring. An injunction entered by the United States District Court for the District of Rhode Island in *PSNH et al v. Patch* (Dist. of N.H. 97-97-JD; Dist. of R.I. No. 97-1216) bars the Commission from requiring CVEC to implement RSA 374-F, but permits the Commission to rule upon voluntary filings made by CVEC to implement the statute.

² The three agreements entered into by the Applicants are referred to in this order as "the Agreements," to distinguish them from the Stipulation of Settlement entered into last year by certain parties to Docket No. DE 00-110.

The Commission entered an Order of Notice on February 3, 2003.³ The Order of Notice (1) indicated that 21 other proceedings currently pending before the Commission⁴ would be consolidated with the instant docket for the purpose of determining whether those proceedings should be closed and/or CVEC dismissed with prejudice in the event of approval of the agreements at issue here, (2) ordered that Docket No. DE 00-110 would be further consolidated with the instant proceeding for the purpose of considering whether to approve the Stipulation of Settlement concerning the Wheelabrator waste-to-energy facility in Claremont, as filed in that docket on April 29, 2002, (3) scheduled a pre-hearing conference for February 18, 2003, (4)

³ The Order of Notice directed PSNH and CVEC to cause its publication in three daily newspapers within the companies' service territories by February 6, 2003. This was accomplished on a timely basis as to the newspapers in Lebanon and Claremont. However, on February 13, 2003, PSNH indicated that it inadvertently failed to meet the deadline as to publication in the Manchester-based *Union Leader*. PSNH requested, and by secretarial letter was granted, permission to meet the *Union Leader* publication requirement by causing the Order of Notice to appear in that newspaper on February 12, 2003. No party interposed an objection to this determination.

⁴ Those proceedings are: DE 01-057 (Core Energy Efficiency Programs), DE 00-289 (2000 Least Cost Integrated Resource Plan), DR 95-250 (N.H. Pilot Retail Competition), DR 96-150 (Statewide Electric Utility Restructuring Plan), DE 02-034 (Statewide Low-Income Electric Assistance Program), DE 01-070 (2001 Long-Range Plans for Bulk Power Supply), DE 96-126 (Reliability), DR 97-241 (1998 FAC/PPCA), DR 98-206 (1999 FAC/PPCA), DC 98-198 (City of Claremont Complaint), DR 99-185 (2000 FAC/PPCA), DE 00-060 (Interim 2000 FAC and PPCA), DE 00-267 (2001 FAC/PPCA), DE 01-225 (2002 FAC/PPCA), DE 02-211 (2003 FAC/PPCA), DE 02-212 2003 (BPTAP), DE 00-110 (Petition for PURPA (Refunds(Wheelabrator))), DE 01-224 Temporary Billing Surcharge, DE 01-231 2002 (C&LMPA), DE 01-232 (2002 BPTAP), and DE 02-224 2002 (CVEC Promissory Notes).

ruled that any intervenor in any docket consolidated with the instant proceeding could become an intervenor in DE 03-030 by notifying the Commission in writing by February 13, 2003, (5) established February 13, 2003 as the deadline for intervention petitions, with objections to such petitions due on February 18, 2003, and (6) enumerated a proposed procedural schedule submitted by the Applicants that would culminate in hearings to be held on May 6-8, 2003 with briefing thereafter.

Pursuant to the Order of Notice, the Commission received timely notice that the following intervenors from other dockets would be preserving their intervenor status in this proceeding: the New Hampshire Electric Cooperative (NHEC), the citizens' group Working on Waste, Granite State Electric Company, CVEC customer Margaret North, Wheelabrator Claremont, Inc., and the Sullivan County Regional Refuse Disposal District and the Southern Windsor/Windham Counties Solid Waste Management District jointly d/b/a New Hampshire-Vermont Solid Waste Project (Solid Waste Project). In addition, the Commission received a timely petition for full intervenor status from James U. McClammer, Jr., a CVEC customer. The Business and Industry Association of New Hampshire (BIA) filed a petition for limited intervenor status on February 14, 2003. There were no written objections to any of these filings.

The pre-hearing conference took place as scheduled on February 18, 2003. However, inclement weather prevented many interested parties from attending. Accordingly, the Commission took statements from those parties present and indicated that it would continue the pre-hearing conference to March 7, 2003. By secretarial letter dated February 18, 2003, the Commission granted Mr. McClammer's intervention request and confirmed the March 7, 2003 date for the continued pre-hearing conference, which took place as scheduled.

On March 13, 2003, the Executive Director and Secretary of the Commission received an electronic communication from John Tuthill of Working on Waste. Mr. Tuthill's communication, which was apparently copied to the parties, referenced the March 19, 2003 technical session included in the Applicants' proposed procedural schedule. Mr. Tuthill's message included a request to move this technical session to April 4, 2003.

The Commission Staff filed a written response to the Working on Waste communication on March 14, 2003. Similarly, on March 17, 2003, the City of Claremont filed a written response, to which PSNH, CVEC, CVPS, GOECS, OCA and NHLA assented.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Public Service Company of New Hampshire, Connecticut Valley Electric Company, Central Vermont Public Service Corporation, the Governor's Office of Energy and Community Services, Office of Consumer Advocate, City of Claremont and New Hampshire Legal Assistance

The Applicants urged the Commission to approve the agreements as submitted, according to their proposed procedural schedule. The agreements involve (1) CVEC exiting the retail electric business and selling substantially all of its assets and distribution franchises in New Hampshire to PSNH on January 1, 2004, (2) PSNH paying CVEC the net book value of the acquired assets, (3) termination of the RS-2 contract by which CVPS supplied CVEC with its wholesale power needs, and (4) the former CVEC customers taking electric service under PSNH's previously approved tariffs, which is likely to result in substantial rate decreases, exceeding 20 percent for some residential customers.

Under the Agreements, PSNH would assume CVEC's power purchase obligations with respect to the five independent power producers (IPPs) (one of which is the Wheelabrator incinerator in Claremont) in the CVEC service territory. The Agreements are conditioned on the Commission's acceptance of the Stipulation of Settlement entered into by certain parties in Docket No. DE 00-110, with CVEC paying PSNH at closing the net present value of its refund obligations under the Stipulation of Settlement.

The Agreements would resolve outstanding issues with respect to CVEC's stranded costs associated with the RS-2 wholesale power contract between CVEC and its parent company. PSNH would make a payment of \$21 million to CVPS to terminate the RS-2 contract. This sum is 62 percent of the \$34 million estimate, made in 2001 by an administrative law judge at the Federal Energy Regulatory Commission (FERC), of the payment to which CVPS would be entitled for termination of the wholesale power arrangement. The Agreements would resolve the FERC proceeding and related federal litigation between CVEC and the Commission.

If the Agreements are approved, PSNH would recover costs associated with IPPs as "Part 2" stranded costs under the PSNH Restructuring Settlement Agreement approved by the Commission in Docket No. DE 99-099. Likewise, the \$21 million payment in connection with the RS-2 contract would be recovered by PSNH as a "Part 3" stranded cost. According to PSNH, this would have the effect of delaying by approximately two or three months the full recovery of Part 3 stranded costs and the attendant reduction in the Stranded Cost Recovery Charge paid by PSNH customers.

B. New Hampshire Electric Cooperative

NHEC indicated that it has only one concern about the proposed transactions. According to NHEC, permitting PSNH to take over the CVEC system and implement PSNH rates in the CVEC service territory would increase charges to NHEC for power NHEC receives from certain CVEC delivery points. In NHEC's view, the Agreements should provide for, or the Commission should order that, no increased costs be imposed on NHEC.

C. Working on Waste

Working on Waste indicated that it does not oppose the acquisition of the CVEC franchise and system by PSNH. Rather, Working on Waste urges the Commission to reject a particular term of the PSNH/CVEC proposal: the requirement that the Commission adopt the Stipulation of Settlement entered into by CVEC, Wheelabrator, OCA and the Commission Staff in connection with Docket No. DE 00-110. Docket No. DE 00-110 concerns allegations that Wheelabrator overcharged CVEC (and, thus, CVEC customers) for power delivered by Wheelabrator to CVEC pursuant to the federal Public Utility Regulatory Policy Act (PURPA) and the analogous New Hampshire statute, the Limited Electrical Energy Producers Act (LEEPA). On March 29, 2002, the Commission entered Order No. 23,939, determining that significant overcharges had occurred and calling for further factual

development. Working on Waste estimates that Order No. 23,939 represents some \$10 million to \$12 million in potential refunds to customers. The Stipulation of Settlement, submitted following the entry of Order No. 23,939, compromises the overcharge amount to \$835,000 and would supercede the substantive determinations made in the March 29, 2002 Order.

Working on Waste points out that, instead of adopting the Stipulation of Settlement, the Commission required the parties to Docket No. DE 00-110 to participate in a mediation process, citing Order No. 24,006 (July 5, 2002) (requiring mediation) and Order No. 24,068 (Oct. 11, 2002) (clarifying Order No. 24,006 and appointing mediator). Working on Waste notes that following this process, the mediator submitted his report on December 20, 2002, and that this report was issued some two weeks after the public announcement of the agreement in principle, with respect to PSNH acquiring CVEC's franchise and system, that gives rise to the instant docket.

Working on Waste writes that the mediator noted that he was not successful in causing the parties to agree upon a resolution of the issues in Docket No. DE 00-110, and that the

report further contained certain recommendations.⁵

It is the position of Working on Waste here that the Commission should adopt all of the mediator's recommendations. Working on Waste further contends that the Stipulation of Settlement in Docket No. DE 00-110 is not in the public interest and should be rejected, that Order No. 23,939 should not be vacated, that the Wheelabrator incinerator in Claremont should be converted to a transfer station in order to protect the public from the problems associated with waste incineration, and

⁵ The mediator recommended: (1) that the Commission allow the parties to submit comments on the mediator's report, (2) that the Commission hold a public hearing to obtain the views of the parties on whether to issue a decision in the Stipulation of Settlement submitted in Docket No. DE 00-110 or whether the Commission should defer its consideration of that agreement until its acts on the agreements submitted in the instant docket, (3) that the Commission conduct a public hearing to allow the parties to Docket No. DE 00-110 to present arguments with respect to the Stipulation of Settlement in that docket, (4) that the Commission ask the parties to Docket No. DE 00-110 to address how the passage of time affects the terms of the Stipulation of Settlement, (5) that the parties to Docket No. DE 00-110 be given an opportunity to address the applicability of a particular LEEPA provision, RSA 362-A:8(b) **(RSA 362-A:8(b) requires the Commission to "consider" certain factors "in all decisions affecting qualifying small power producers and qualifying cogenerators" such as Wheelabrator. Among these factors are "[p]otential environmental and health-related impacts." Id. at II(b)(5)),** to the Commission's review of the Stipulation of Settlement, (6) that the Commission address the reasonableness of the terms and conditions in the Stipulation of Settlement that would require the Commission to vacate Order No. 23,939 and substitute certain specific findings and rulings with respect to CVEC and Wheelabrator, (7) that prior to a ruling on the Stipulation of Settlement the parties to Docket No. DE 00-110 be permitted to comment on the effect of the Stipulation of Settlement, if approved, on future proceedings before the Commission that involve PURPA and/or LEEPA generally as well as future proceedings that involve the power purchase agreement between CVEC and Wheelabrator, **(Specifically, the mediator recommended the receipt of comments on both how the Commission would handle such future proceedings and how its Staff would participate in such cases, in light of the Stipulation of Settlement.)** and (8) that in ruling on the Stipulation of Settlement the Commission take into account any other factors that bear on whether the stipulation is reasonable and in the public interest.

that the Commission modify the "overly ambitious" procedural schedule proposed by the applicants.

Of particular concern to Working on Waste are the provisions in the Stipulation of Settlement that would preclude the signatories asserting, bringing forward or supporting in any way a claim or assertion that directly or indirectly sets forth any of the issues that are the subject of Order No. 23,939. According to Working on Waste, if such a provision were approved by the Commission it would unreasonably restrict future regulatory and/or judicial review. Among the issues that Working on Waste believes are potentially implicated are (1) the Solid Waste Project's role in crafting and implementing the power purchase agreement between CVEC and Wheelabrator, (2) the assignment of rights and responsibilities from the Solid Waste Project to Wheelabrator's predecessor-in-interest, (3) the failure of the parties to the power purchase agreement to present it to the Commission for review, and (4) the environmental and health problems associated with the Claremont incinerator. According to Working on Waste, there is an inconsistency between Wheelabrator advocating a settlement that would foreclose such issues and Wheelabrator's having previously argued that the Commission is without jurisdiction to address most issues arising under its contractual dealings with CVEC.

According to Working on Waste, RSA 362-A:8(b) obligates the Commission to consider that Wheelabrator is a major source of pollution locally and statewide, that garbage incineration generates toxic air emissions and ash, and that incineration wastes resources that could and should be recycled. Working on Waste further contends that the Commission is obliged to take into account that Wheelabrator plans to increase its energy output in the future, and that the rates potentially paid to PSNH by former CVEC customers would be even lower if Wheelabrator no longer sold power to its local utility in Claremont.

Working on Waste contends that an appropriate outcome of this docket would be the establishment of a closure date for the Wheelabrator incinerator in Claremont and the facility's conversion to a garbage transfer station. According to Working on Waste, this would free CVEC customers from the costs of Wheelabrator's high-priced electricity, result in cleaner air, enhance the image of Claremont and Sullivan County (thus potentially enhancing economic development opportunities in the area), and provide communities involved in the Solid Waste project with "seamless trash management."

Finally, Working on Waste complains that the parties to the Agreements at issue in this docket agreed upon the terms

of the Agreements before having had an opportunity to review the recommendations of the mediator in Docket No. DE 00-110.

In the interest of achieving a thorough review of the matters raised by this docket, Working on Waste requests that the Commission approve a procedural schedule that would involve the submission of intervenor testimony on May 2, rebuttal and sur-rebuttal thereafter, merits hearings from August 11 to 13, briefing in late September and an order of the Commission by October 31.

D. James U. McClammer, Jr.

Although he did not appear at the pre-hearing conference, Mr. McClammer submitted a written statement. In it, he took the position that the Agreements do not provide just compensation to CVEC customers for past overcharges related to Wheelabrator. According to Mr. McClammer, these overcharges may amount to nearly \$10 million and should be placed in escrow pending resolution of the matter.

E. Margaret North

Ms. North did not appear at the pre-hearing conference, but provided a written statement. She expressed concerns about including the Stipulation of Settlement from Docket No. DE 00-110 in the proposed Agreements relating to CVEC and PSNH. Ms. North further suggested that at least some

members of the Claremont City Council, in endorsing the Agreements, may not have been fully aware of the implications with respect to the issues arising in Docket No. DE 00-110.

F. Staff

In his capacity as a signatory to the Agreements at issue in this docket, Mr. Epler spoke on behalf of Staff. He indicated that Staff is supportive of the proposed assumption by PSNH of the CVEC franchise, on the terms that include the Commission's acceptance of the Stipulation of Settlement previously submitted in Docket No. DE 00-110. Mr. Epler urged the Commission to approve the procedural schedule originally proposed by the Applicants. He noted that Working on Waste has already had opportunities in Docket No. DE 00-110 to conduct discovery and develop the issues it seeks to raise here. He further pointed out that the Agreements call for the CVEC-PSNH transactions to close on January 1, 2004. According to Mr. Epler, the procedural schedule proposed by Working on Waste would not allow sufficient time for the Commission's order to become final and unappealable prior to the closure date specified in the Agreements.

III. INTERVENTION PETITION

There were no objections to the BIA's request for limited intervenor status. In its petition, the BIA indicates

an intention simply to "monitor" the docket, a desire to be on the service list associated with the proceeding to receive all materials including discovery, and an intention to make a statement of its position at hearing. According to the BIA, it does not intend to proffer witnesses or submit direct testimony "at this time." According to the BIA, granting it limited intervenor status will not disrupt the orderly conduct of the proceedings or interpose any delay.

At the prehearing conference, the Chairman noted that the BIA's request appeared to be a request for full intervention, in which it had noted it did not intend to proffer a witness. Accordingly, BIA was granted intervention as a full party and it may elect how it exercises its rights as such.

IV. PROCEDURAL SCHEDULE

Upon a careful review of the parties' respective positions as articulated at the pre-hearing conference on the issue of the procedural schedule for the docket, we adopt the procedural schedule substantially as proposed by the Applicants rather than the one suggested by Working on Waste. We do so for three reasons.

First, the procedural schedule proposed by the Applicants is reasonable. It provides all parties a full and fair opportunity to conduct discovery, to develop and submit

testimony and to meet for the purposes of discussing the case and possibly resolving outstanding issues. The timing of the schedule is consistent with that which we have adopted in similar proceedings. We note that, without complaint and pursuant to the Applicants' proposed schedule, Working on Waste submitted data request to other parties on March 4, 2003 and responses are now pending.

Second, we have carefully reviewed the recommendations of the mediator in Docket No. DE 00-110 and considered the assertion of Working on Waste that these recommendations should be implemented. In our view, the procedure we have put in place effectively implements nearly all the mediator's recommendations within the context of this procedural schedule.

The mediator recommended that the Commission hold a public hearing in Docket No. DE 00-110 to determine whether to act on the Stipulation of Settlement immediately or to defer its consideration until the deliberation on the PSNH-CVEC Agreements. To some extent, we rejected this recommendation in our Order of Notice in this docket, because we opted to consolidate Docket No. DE 00-110 with the instant proceeding for the purpose of further consideration of the Stipulation of Settlement. However, we have not foreclosed the possibility of rejecting the Stipulation of Settlement outright as urged by

Working on Waste, Mr. McClammer and Ms. North, and we understand the mediator's recommendation as essentially designed to preserve such an option.

In connection with this recommendation, the mediator suggested that the Commission receive input from the parties in Docket No. DE 00-110 as to whether we should consider the Stipulation of Settlement based solely on the record in Docket No. DE 00-110, or whether we should consider that agreement in the broader context of evidence relating to the PSNH-CVEC Agreements. This is an issue the parties are free to address in their pre-filed testimony and post-hearing briefs.

Likewise, all of the other issues raised by the mediator can be addressed by the parties in testimony and briefs, and we can resolve them in due course as necessary. Specifically, the parties are free to raise issues here as to the substance of the mediator's report, the substance of the Stipulation of Settlement in Docket No. DE 00-110, the effect of the passage of time on the terms of the Stipulation of Settlement, the implications of RSA 362-A:8(b) with respect to the Stipulation of Settlement, the effect and propriety of the *vacatur* terms of the Stipulation of Settlement, the effect of the Stipulation of Settlement on any future proceedings before the Commission, and other factors that bear upon the question of

whether the Stipulation of Settlement is consistent with the public interest. This list of issues is not intended to limit the extent of the evidence or arguments that any party may present as to the Stipulation of Settlement or the PSNH-CVEC Agreements, but only to make clear that the particular issues highlighted by the mediator can be fully heard under the procedural schedule proposed by the Applicants.

Finally, as noted at the pre-hearing conference, deferring the merits hearing to August and the entry of an order thereafter to October would be likely as a practical matter to preclude the implementation of the proposed PSNH-CVEC transactions reflected in the Agreements, and thus amount to an adverse decision on the proposed PSNH-CVEC transactions. The Agreements specify a closing date of January 1, 2004. If we approved the Agreements on October 31, 2003, either with or without conditions, RSA 541:3 would then trigger a 30-day rehearing period that would not end until late of November of 2003, and would preclude the order from becoming final until the end of that period. If a rehearing motion were filed in late November, and immediately denied by the Commission, the aggrieved party or parties would then have a 30-day period under RSA 541:6 to seek appellate review by the New Hampshire Supreme Court. Such a scenario would almost certainly leave the

Applicants without authority to close the transactions by the specified date of January 1, 2004. We will not permit an unnecessarily extended process to effectively decide the matters at issue here adversely to the petitioners.

Additionally, we do not adopt the proposal of Working on Waste that the procedural schedule include the submission of "sur-rebuttal" testimony by intervenors. It is appropriate to permit the parties with the burden of proof at hearing - i.e., the Applicants - to have the final opportunity to submit pre-filed testimony. We also note that scheduling constraints unrelated to this docket have required us to defer the merits hearing approximately one week beyond the dates proposed by the Applicants.

The only remaining issue concerns the electronic communication received on March 13, 2003 by the Executive Director and Secretary from Working on Waste regarding a requested delay in the technical session scheduled for March 19, 2003. The Applicants, and the Commission Staff, have treated this communication as if it were a motion filed with the Commission pursuant to Puc 203.04. Staff counsel filed a responsive letter on March 14, 2003, opposing the requested delay, but offering additional opportunities to Working on Waste and other parties for informal discovery of the kind that takes

place during technical sessions. City of Claremont filed a letter suggesting an alternate date for the technical session.

In the circumstances it is consistent with principles of efficiency and fairness for us to treat the Working on Waste communication as if it were a motion. However, we caution all parties that any future requests for Commission action in this docket must comply with Puc 203.04 (describing motion practice, including requirement of good faith effort to obtain concurrence of other parties), Puc 204.02 (specifying that motions must be submitted in paper form), Puc 202.07 (setting forth filing requirements) and Puc 202.18 (enumerating service requirements). These requirements are not procedural niceties but basic measures to assure, *inter alia*, that it is clear when an issue has been presented to the Commission for its determination, and that all parties to a proceeding have a full and fair opportunity to address such issues prior to a decision.

On the merits of Working on Waste's request, we will adopt Staff's recommendation but employing the alternative technical session date proposed by the City of Claremont. We agree with Staff that the addition of a second technical session - as opposed to the cancellation of the March 19 session referenced in our Order of Notice - will best serve the objective of allowing all parties to obtain necessary

information prior to hearing. Intervenors, in particular, will likely benefit from the opportunity to obtain additional information on March 19 because that date is well in advance of their deadline for submitting pre-filed testimony. An additional technical session on April 3 will provide a similar, albeit last-minute, opportunity along similar lines for the two representatives of Working on Waste unable to attend the March 19 session.

With regard to the additional technical session, Staff recommended that it trigger the addition of no other changes in the Applicants' procedural schedule. Staff noted that Working on Waste's concerns in this docket relate solely to the Wheelabrator incinerator -- and that Working on Waste (including those of its representatives who will be absent on March 19) has had an opportunity, through the discovery and mediation conducted in Docket No. DE 00-110, to obtain any and all information related to the incinerator. Nevertheless, Staff addressed the possibility that the early April technical session could cause Working on Waste to become aware of some new information or argument not previously available to it, in which instance Staff recommended that Working on Waste be given an opportunity to move to amend the testimony it must submit by

April 4, 2003. According to Staff, the burden of proof in such a motion must rest with Working on Waste.

We adopt Staff's recommendation with respect to the effect of the April 3 technical session on the overall procedural schedule. For the reasons already set forth, related to the timing of our ultimate decision in this case in relation to the expected closing date in the transaction, any party seeking to amend the procedural schedule will carry the burden of proving that such an amendment is consistent with the public good.

Accordingly, we approve the following procedural schedule to govern the remainder of this docket:

Data requests from intervenors to settling parties	3/04/03
Data responses from settling parties	3/14/03
Technical Session	3/19/03
Technical Session	4/03/03
Intervenor Testimony	4/04/03
Data requests from settling parties to intervenors	4/11/03
Data responses from intervenors	4/21/03
Rebuttal testimony from settling parties	4/29/03
Public hearing in Claremont	Week of 4/28/03
Public hearing in Manchester	Week of 4/28/03
Data responses from settling parties	3/14/03

Merits Hearing	5/15/02 and 5/16/02
Transcripts filed	5/20/03
Briefs	5/30/03
Commission order	by 6/30/03 ⁶

Based upon the foregoing, it is hereby

ORDERED, that the procedural schedule as enumerated herein is reasonable and is hereby adopted; and it is

FURTHER ORDERED, that the pending motion of the Business and Industry Association of New Hampshire to intervene on a limited basis is granted.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of March, 2003.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director and Secretary

⁶ The only other preliminary matter pending is Mr. McClammer's written suggestion that we require certain funds to be placed in escrow. Escrow is warranted only when failure to set aside funds in questions puts ultimate relief (and the Commission's jurisdiction) in jeopardy. Such is not the case here. We decline to adopt Mr. McClammer's escrow proposal.